

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

BMS SETTLEMENT,  
TRACK TWO SETTLEMENT, AND  
ASTRAZENECA CLASS 2 AND 3  
SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFF'S THIRD STATUS REPORT FOR BMS,  
TRACK TWO AND ASTRAZENECA SETTLEMENTS**

**A. Background**

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Docket No. 7313) and an Order for Final Consideration of the Track Two Settlement (Docket No. 7314) (collectively, the “November Orders”). The November Orders directed Class Counsel to provide monthly status reports “detailing the progress” of both the BMS and Track 2 Settlements. This is the third such report.

**B. BMS Proposed Settlement**

Utilizing data produced in December 2010 by CMS, Rust Consulting, Inc. (“Rust”), the Court-appointed claims administrator, identified by name 695,910 individuals who are potential members of Class 1 in the BMS Proposed Settlement because they were administered a BMS eligible drug during the class period. In compliance with the Court-approved BMS settlement schedule, direct notice was mailed to each individual identified in the CMS data. That mailing

was completed on December 30, 2010. Recipients of the initial mailing had until January 31, 2011 to postmark and mail the return card that accompanied the initial mailing.

As of January 28, 2011, Rust had received approximately 11,000 return notice cards. Additional return cards are expected to be received in the coming days. Rust is in the process of mailing each individual who received a reply card the full notice with their pre-printed claims information obtained from the CMS data. If recipients do not have changes to the pre-printed information provided, they need not return the notice and their claim will be calculated using that information. Neither Rust nor Class Counsel anticipate any delay in completing notice to Class 1 in accordance with the Court's approved schedule. The deadline for objections, requests for exclusions and claim filing is February 28, 2011. A final approval hearing is scheduled for March 28, 2011.

### **C. Track Two Proposed Settlement**

On December 31, 2010, Class Plaintiffs filed a Status Report Regarding the Track Two Settlement. Docket No. 7367. In that report, Class Plaintiffs outlined for the Court's consideration the expense associated with direct mail notice to all 19.3 million individuals identified in CMS data as potential Class 1 members in the Track Two Settlement. Class Counsel also provided the Court with information on potential alternatives to the original direct mail notice plan and the expense associated with each.

On January 4, 2011, the Court issued an order directing Class Counsel to proceed with the original notice plan and requested that Class Counsel provide options for scaling back the call center to be used to answer questions from individuals receiving mailed notice. On January 7, 2011, in response to a motion for reconsideration of the Court's January 4, 2011 Order filed by

TPP Allocation Counsel and the ISHPs (Docket No. 7379), the Court reconsidered its January 4, 2011 Order.

In an order dated January 7, 2011, the Court directed Class Counsel to proceed with the Alternative 3 notice and publication plan identified in Class Counsels' December 31, 2011 report. That alternative program consists of direct mail notice to 2.2 million individuals identified in the CMS data as having Class A drug administrations and a national media notice program directed at Class 1 members with Class B drug administrations. On January 11, 2011, Class Counsel filed a Response to the Court's January 4, 2011 Order requesting call center options (Docket No. 7383) providing the Court with various options for scaling back the call center to be used to answer questions from individuals receiving mailed notice.

Commensurate with the filing of this status report on February 1, 2011, Class Counsel has submitted for the Court's consideration and approval a revised notice program in accordance with the Court's instructions to proceed with the Alternative 3 notice and publication plan. The revised notice program includes changes to the notice documents to be approved by the Court necessitated by the different forms of notice to be provided to Class 1 members. Because of the need to purchase national TV spots and placement in national print publication, the revised notice program also includes a revised schedule for completion of notice and for other milestones in the AWP Track Two Settlement, including a new date for a final approval hearing.

Class Counsel are very conscious of the desire of all parties to finish notice as quickly as possible and have proposed an aggressive notice schedule and instructed Kinsella Media, Inc. to purchase the earliest available television spots and print publications available. Under the revised notice schedule, print media and cable television spots would appear between April 4,

2011 and April 24, 2011. The revised schedule proposes a final approval hearing in mid-June 2011 in lieu of the currently scheduled final approval date of April 19, 2011.

**D. AstraZeneca Class 2/3 Proposed Settlement**

The final hearing on the AstraZeneca Class 2 and Class 3 Proposed Settlements (both Massachusetts and non-Massachusetts) is scheduled for February 8, 2011. On Wednesday, December 15, 2010, Class Counsel filed papers in support of the settlement, as required under the Court's scheduling order. As of December 31, 2010 deadline for filing of objections to the settlements, Class Counsel had not received any objections or notices of appearances from objectors or other class members.

**E. The Next Status Report**

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on March 1, 2011.

DATED: February 1, 2011

By /s/ Steve W. Berman

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**CLASS COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S THIRD STATUS REPORT FOR BMS, TRACK TWO AND ASTRAZENECA SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on February 1, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman